

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re: Sherry A. Loy	)	Case No. 13-13755
	)	Chapter 13 Proceedings
Debtor.	)	Judge Arthur I. Harris

**TRUSTEE’S MOTION TO DISMISS CASE WITH SANCTIONS**

Now comes CRAIG SHOPNECK, the duly appointed and qualified Standing Chapter 13 Trustee (“Trustee”) herein, by and through counsel, and hereby moves this Honorable Court to dismiss the case of the Debtor (“Debtor”) pursuant to Section 1307 of the Bankruptcy Code, and to impose a one hundred and eighty (180) day prohibition against re-filing for relief under any chapter, provision, or section of the Bankruptcy Code. In support of his motion, the Trustee makes the following representations to the Court:

1. Debtor filed a petition under Chapter 13 of Title 11, U.S.C. on May 23, 2013. The Chapter 13 Plan (“Plan”) was confirmed on October 21, 2013. The current Plan of the Debtor requires payments to the Trustee in the amount of \$741.80 each month.
2. The Trustee has reviewed his records and states that as of the date of the hearing on this Motion, the Debtor will be delinquent \$2,652.46 through the February 2015 payment.
3. Upon review of the Trustee’s records, it appears that the Debtor has repeatedly failed to fund the Plan or otherwise address the delinquency until the Trustee files a motion to dismiss case. On March 19, 2014, Trustee filed the first motion to dismiss case for material default in funding. The delinquency amount stated in the motion was \$3,701.66. The hearing on this motion was scheduled for April 24, 2014. On April 18, 2014, Debtor remitted a payment in the amount of \$4,500.00 and therefore, the motion to dismiss case was withdrawn.
4. On July 16, 2014, the Trustee filed a second motion to dismiss case as the Debtor was in material default in funding the Plan. The delinquency amount stated in this motion was \$2,168.86. The hearing on this motion was scheduled for August 21, 2014 and adjourned to

September 18, 2014. On August 20, 2014, Debtor remitted two (2) payments totaling \$1,000.00. On August 28, 2014, Debtor filed a motion for moratorium “on Plan Payments: May 1, 2014 through October 31, 2014.” On September 18, 2014, the motion for moratorium was granted and the motion to dismiss case was withdrawn. The order granting moratorium was entered by the Court on September 19, 2014.

5. On this date, the Trustee is filing his third motion to dismiss case as the Debtor is again in material default in funding the Plan. At this time, Trustee is requesting that if Debtor is to remit the delinquent amount of \$2,652.46 and continue funding the Chapter 13 Plan, and should the Debtor default in future Plan payments, Trustee only need to file an affidavit with the Court in order to dismiss the case of the Debtor.

6. Section 1307(c)(1) of the Bankruptcy Code states that unreasonable delay by the debtor that is prejudicial to creditors is grounds for dismissal of the case of the debtor. In addition, Section 1307(c)(6) of the Bankruptcy Code states that material default by the debtor with respect to the terms of a confirmed plan is grounds for dismissal of the case of the debtor. The Trustee believes that the failure of the Debtor to maintain payments to the Trustee has unreasonably delayed the administration of the case of the Debtor, and ultimately delayed the potential repayment of the creditors of the estate of the Debtor. As a result, cause exists to dismiss the case of the Debtor.

7. Trustee is also seeking the imposition on the Debtor of a one hundred and eighty (180) day prohibition against re-filing for relief under any section, provision, or chapter of the Bankruptcy Code because of the repeated inability of the Debtor to successfully prosecute a Chapter 13 Plan. The case at bar is the fourth case filed by the Debtor since April 2010. The following is a summary of the Debtor’s previous filings:

<b>Case Number</b>	<b>Date of Filing</b>	<b>Chapter Number</b>	<b>Date of Dismissal</b>
10-13665	04/21/2010	13	07/26/2011 Dismissed for failure to make plan payments.

<b>Case Number</b>	<b>Date of Filing</b>	<b>Chapter Number</b>	<b>Date of Dismissal</b>
11-20811	12/30/2011	13	05/15/2012 Dismissed for failure to make plan payments.
12-16586	09/07/2012	13	02/21/2013 Dismissed for failure to make plan payments.

It is evident from Debtor's conduct in the previous cases and in the case at bar, that Debtor is either unable or unwilling to comply with the responsibilities of a Chapter 13 Debtor, and it would be prejudicial to the creditors of the estate and burdensome to Trustee to allow Debtor to file for Bankruptcy relief without giving the creditors of Debtor the opportunity to pursue their legal collection activities.

WHEREFORE your Trustee, being a proper party in interest, hereby moves this Honorable Court to grant his motion, dismiss the case of the Debtor, and impose a one hundred and eighty (180) day prohibition on the Debtor against filing for relief under any provision, section, or chapter of the Bankruptcy Code for the aforementioned reasons cited and for such other relief as the Court deems proper and just.

/S/ Philip D. Lamos

PHILIP D. LAMOS (#0066844)

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## CERTIFICATE OF SERVICE

I certify that on February 20, 2015 a true and correct copy of this Trustee's Motion to Dismiss Case with Sanctions was served:

Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

Susan M. Gray, on behalf of Sherry A. Loy, Debtor, at [ecf@smgraylaw.com](mailto:ecf@smgraylaw.com)

And by regular U.S. mail, postage prepaid, on:

Sherry A Loy, Debtor, 4512 W. 172nd Street, Cleveland OH 44135

/S/ Philip D. Lamos

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